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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,740	02/12/2002	Patrick P. Russo	19369/115/101	1488

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EXAMINER

HO, UYEN T

ART UNIT PAPER NUMBER

3731

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,740

Applicant(s)

RUSSO ET AL.

Examiner

(Jackie) Tan-Uyen T. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11, 13-21, 25, 27 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-11, 13-21, 25, 27 and 31-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 2-11, 13, 15-21, 25, 27, 31-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Green (6,485,501). Green discloses a distal tip (380) for a medical catheter including all the limitations as claimed (see figures 28-31). Wherein the distal tip is inherently made from material conformable, deformable and compliant material since the tip inherently flexible enough to be inserted into vascular system. Green discloses the distal tip/capture sheath having marker band (col. 11, line 1-2). Note: The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the distal tip of Green's catheter which is capable of being used as claimed if one desires to do so.

3. Claims 2-11, 13, 15-21, 25, 27, 31-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Hanson et al. (6,616,681). Hanson et al. disclose a distal tip of a medical catheter including all the limitations as claimed (see figures 17, col. 13, lines 33-53). Note: The introductory statement of intended use and all other functional

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statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the distal tip of Hanson et al.'s catheter which is capable of being used as claimed if one desires to do so. In regard to claim 27, examiner considers as the cone tip (960) fold proximally at a hinge (943, col. 13, lines 22-53), it is inherently rolled inwardly towards the lumen forming a rolled tip as claimed.

4. Claims 2-11, 13, 15-21, 25, 27, 31-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Krolik et al. (6,663,651). Krolik et al. disclose a distal tip of a medical catheter including all the limitations as claimed (see figs. 4A-5B, 7A-7C, 9, col. 4, line 54 to col. 7, line 27). Wherein the distal tip (50) is made from thin biocompatible material and comprises a radiopaque material (see col. 4, line 56 to col. 5, line 19). Note: The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the distal tip of Krolik et al.'s catheter which is capable of being used as claimed if one desires to do so. In regard to claim 27, examiner considers as curved tip (51) is inherently deflected inwardly towards the lumen as the filter drawn into the member (50) forming a rolled tip as the as claimed.

Response to Amendment

5. Applicant's arguments filed 7/26/04 have been fully considered but they are not persuasive. Applicant argues that Green fails to disclose "the wall having undeflected configuration prior to retrieval of the medical device into the lumen and a deflected configuration during retrieval of the medical device into the lumen, ... a distance

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between proximal and distal ends of the wall is less in the deflected configuration than in the undeflected configuration". Examiner disagrees. Green, Hanson and Krolik disclose catheters having flexible distal tips including walls capable of forming into a deflected configuration as claimed during retrieval of the medical device into the lumen. By look at figures 4a-4b of reference Krolik et al., if the filter 30 contains such a large amount of embolic material or hard/solid material, as the filter with such amount of embolic material withdrawn into the sheath (50), it would cause the distal tip at the curve portions to deflect and more curve inward before expansion slits (52) permit the curve portion expand to accept the filter. Krolik et al. discloses the distal tip (50) being made from a thin biocompatible material (col. 4, lines 56-65) and the reinforce member (57) only extends proximal to the curve portion (51, see fig. 4A), leaving the curve portion with thin biocompatible material and with thin material the curve portion (51) inherently curve more inward when the filter being withdrawn. Since all the distal tips of Green, Hanson and Krolik's catheter are some what flexible, they are capable of forming into a deflected configuration as claimed when they retrieves a medical device having an impact to cause them curve inwardly.

The introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Green, Hanson or Krolik's device which is capable of being used as claimed if one desires to do so.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is (703) 306-3421. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN or NGUYEN can be reached on 703-308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho
Patent Examiner
Art Unit 3731
October 20, 2004



ANH TUAN T. NGUYEN
PRIMARY EXAMINER

10/25/04